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**From:** McDavit, Michael W. [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4CB54848E7F641BF90E7CBBFEDB28971-MICHAEL W. MCDAVIT]  
**Sent:** 4/8/2020 9:18:47 PM  
**To:** Hurlid, Kathy [Hurlid.Kathy@epa.gov]  
**Subject:** RE: Status of Florida's Assumption effort and BE for ESA consultation

Looks good, Kathy.

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**From:** Hurlid, Kathy <Hurlid.Kathy@epa.gov>  
**Sent:** Wednesday, April 08, 2020 5:03 PM  
**To:** Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>  
**Cc:** McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Chemerys, Ruth <Chemerys.Ruth@epa.gov>  
**Subject:** Status of Florida's Assumption effort and BE for ESA consultation

Note for John G to send to Dave Note: John may want to delete the last bullet, but it is interesting and Dave may be interested.

Dave,

I wanted to send you a quick update on FL's efforts and timing to assume the CWA 404(g) program. FDEP and EPA staff have been working hard to finalize portions of FDEP's request package as well as undertake informal consultation under Section 7 of ESA on the program approval. Based upon the ongoing conversations and changing timelines in FL, we are not sending you anything for your approval or input at this time.

The following is the status of these efforts as well as Florida's timing as we currently understand it.

- EPA comments on FDEP's proposed rule – Currently FL is engaging in public hearings (via webinar due to COVID-19) on their proposed rule. They will grant a request to hold additional hearing(s) and will extend the comment period to include the hearing(s). Date of new hearing(s) is TBD but likely at least several weeks out.
  - FDEP has requested EPA's comments by the close of the comment period which is unknown at this time.
  - EPA staff are reviewing recent version of the rule and will provide to Sr. Management any formal comments on the rule for your review. We understand that FDEP's consultant and FDOT have requested changes to the rule FDEP intends to address.
- FDEP's enforcement authorities – Passed by the legislature, the legislation has not yet been sent to the Governor as he is not accepting legislation at, must be sent by June 2 and he has 15 days to sign or it becomes law.
- ESA Biological Assessment – EPA is awaiting a new draft of the Biological Assessment. When received we will brief you and other senior managers with any concerns.
- FDEP's public hearings – FDEP said the hearings were going well, support is mixed and specifically mentioned comments raised at their hearing included:
  - The 300-foot administrative line for retained adjacent wetlands is arbitrary and not based in science.
  - State and Federal permit requirement is viewed as a check and balance in the permitting process.
  - Pointed out that current rule does not consider cumulative and secondary impacts in permit – FDEP is addressing.
  - Raised point if consulting under ESA, need to also consult under other acts such as NHPA and NEPA – Tribes are raising NHPA consultation while others are raising NEPA consultation.
  - FDEP is deferring questions unrelated to the rule, but relevant to assumption to EPA's public hearings on program approval – EPA is tracking these e.g., concerns about assuming without additional staffing of funding.